Calendar No. 461

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SENATE

REPORT
100-234

NTL-5 GAS ROYALTY ACT OF 1987

DECEMBER 4 (legislative day, DECEMBER 3), 1987.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 3479]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 3479) to provide for adjustments of royalty payments under certain Federal onshore and Indian oil and gas leases, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and an amendment to the title and recommends that the Act, as amended, do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be referred to as the "NTL-5 Gas Royalty Act of 1987".

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior or his designee.

(2) NTL-5.—The term "NTL-5" means the Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases published May 4, 1977 (42 Fed. Reg. 22610).

(3) OTHER TERMS.—All other terms carry the same meanings as provided in section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1702).

SEC. 3. VALUATION FOR ROYALTY PURPOSES OF CERTAIN GAS PRODUCTION FROM FEDERAL AND INDIAN LANDS.

(a) APPLICABILITY.—The provisions of this section shall be used in determining the value for royalty purposes of any gas production from Federal onshore or Indian oil and gas leases during the period from January 1, 1982, through July 31, 1986, which is within the coverage of section I.A.2 or section II.A.2 of NTL-5, and for which the lessee or royalty payor provides written documentation, determined to be adequate by the Secretary and existing at or near the time the gas was sold, of receipt of less than the highest applicable price under the Natural Gas Policy Act.

S313-41

(b) ROYALTY CALCULATION FOR CERTAIN FEDERAL ONSHORE OIL AND GAS LEASES.—If the gas referred to in subsection (a) of this section was produced from a Federal onshore lease, the value shall be determined in accordance with the lease terms and the regulations codified at part 206 of title 30 of the Code of Federal Regulations as in effect at the time of production.

(c) ROYALTY CALCULATION FOR CERTAIN INDIAN LEASES.—If the gas referred to in subsection (a) of this section was produced from an Indian lease, the value shall be determined in accordance with the lease terms and the regulations codified at part 206 of title 30 of the Code of Federal Regulations and sections 211.13 and 212.16 of title 25 of the Code of Federal Regulations, as applicable and as in effect at the time of production.

(d) WRITTEN DOCUMENTATION.—The written documentation required under subsection (a) of this section may include, but is not limited to, a gas sales contract, purchase statement, receipt, or other written documentation deemed appropriate by the Secretary existing at or near the time of sale showing the actual price received.

(e) EXCEPTION.—This section shall not apply to any gas for which, in the Secretary's judgment, the lessee or royalty payor received less than the highest applicable price under the Natural Gas Policy Act due to a failure by the lessee or payor to collect amounts which the purchaser would have been required to pay under a gas sales contract providing for that price and not as a result of market conditions or considerations.

SEC. 4. REFUND OF ROYALTIES PREVIOUSLY PAID.

(a) REFUND FOR FEDERAL ONSHORE OIL AND GAS LEASES.—If the Secretary or a court of competent jurisdiction determines that a lessee or royalty payor on a Federal onshore oil and gas lease has paid, prior to October 1, 1987, more than the value determined under subsection 3(b) of this Act for any natural gas within the coverage of subsection 3(a) of this Act, the Secretary shall refund the amount paid in excess of the value determined under subsection 3(b) from monies received under section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 191), which would otherwise be deposited to miscellaneous receipts in the Treasury. The Secretary shall not recoup any portion of such refund from any State.

(b) REFUND FOR INDIAN LEASES.—If the Secretary or a court of competent jurisdiction determines that a lessee or royalty payor has paid, prior to October 1, 1987, more than the value determined under subsection 3(c) of this Act for any gas within the coverage of subsection 3(a) of this Act and produced from an Indian lease, the Secretary shall refund the amount paid in excess of the value determined under subsection 3(c) from monies received under section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 191) which would otherwise be deposited to miscellaneous receipts in the Treasury. The Secretary shall not recoup any portion of any such refund from the Indian lessor.

(c) The total amount of refunds made under this section shall not exceed $2,000,000.

SEC. 5. PROCEDURES.

(a) CASE-BY-CASE AUDIT FOR CERTAIN FEDERAL ONSHORE OIL AND GAS LEASES.—The Secretary shall publish in the Federal Register and send to each lessee or royalty payor of record as of July 31, 1986, for any Federal onshore oil and gas lease a notice of enactment of this Act informing such lessees and royalty payors of the provisions of this Act and the terms and conditions for receiving refunds or royalty calculations under this Act. Any lessee that has reason to believe that it is entitled to a refund under this Act shall provide written notice to the Secretary in a form prescribed by the Secretary specifying the Federal onshore oil and gas lease or leases involved. The Secretary, and any State in accordance with delegations of authority under section 205 or cooperative agreements under section 202 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732, 1735), shall conduct a case-by-case audit of royalties for such leases and any other Federal onshore lease which the Secretary may select for examination under existing law to determine the amount of royalties due and payable under this Act and other applicable law and the amount of any refund due the lessee.

(b) CASE-BY-CASE AUDIT ON INDIAN LEASES.—The Secretary, and any tribe in accordance with cooperative agreements under section 202 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732), shall conduct a case-by-case audit of royalties for Indian oil and gas leases on which gas was produced at any time during the period from January 1, 1982, through July 31, 1986, which is within the coverage of section I.A.2 or II.A.2 of NTL-5 to determine the amount of royalties due and payable under this Act and other applicable law and the amount of any refund due the lessee.

(c) MMS NOTICE.—The Secretary shall provide a notice under this section to each lessee under a Federal onshore or Indian oil and gas lease on which an audit was performed in accordance with this section. The notice shall contain each of the following:

(1) A statement of the amount of the royalty payments made in accordance with the provisions of NTL–5.

(2) A statement of the amount of refund, if any, to which the lessee is entitled under this Act and a description of the means by which such refund will be provided.

(c) REPORT TO INDIAN TRIBES.—The Secretary shall provide a report to each Indian tribe holding an Indian oil and gas lease on which gas was produced at any time during the period from January 1, 1982, through July 31, 1986, which is within the coverage of section I.A.2 or section II.A.2 of NTL–5. The report to each tribe shall contain information for each lease held by the tribe stating the difference between royalties computed in accordance with NTL–5 and royalties computed in accordance with subsection 3(c) of this Act.

SEC. 6. RECORD KEEPING REQUIREMENTS.

Notwithstanding the requirements of section 103 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1713), and any regulations promulgated pursuant thereto, lessees and other payors are required to maintain records related to the value of gas production to which this Act applies for the period January 1, 1982, through July 31, 1986, until the Secretary gives notice that maintenance of such records no longer is required.

2. Amend the title so as to read "An Act to provide clarification regarding the royalty payments owed under certain Federal Onshore and Indian oil and gas leases, and for other purposes.".

PURPOSE OF THE MEASURE

H.R. 3479, as amended and recommended by the Committee, would provide clarification regarding the royalty payments owed under Federal onshore and Indian oil and gas leases for certain gas production. The bill would:

(1) apply to that gas production from Federal onshore or Indian oil and gas leases during the period from January 1, 1982, through July 31, 1986, which is within the coverage of section I.A.2 or II.A.2 of Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases No. 5 (NTL–5) and for which the lessee provides certain documentation of price received;

(2) provide that royalties for such gas production shall be determined in accordance with lease terms and applicable regulations;

(3) provide for refunds not to exceed a total of $2 million from future Federal mineral receipts for royalties previously overpaid;

(4) require a case-by-case determination of royalties payable; and

(5) provide for certain procedures to facilitate implementation.

BACKGROUND AND NEED

Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases No. 5 (NTL–5) became effective on June 1, 1977, and set forth procedures for establishing royalty values for gas produced from Federal onshore and most Indian oil and gas leases.

NTL–5 required a substantial amount of gas to be valued for royalty purposes at the higher of the price received by the lessee or

operator in accordance with an applicable sales contract or the highest applicable ceiling rate then established by the Federal Power Commission for the same vintage gas. Upon passage of the Natural Gas Policy Act of 1978 (NGPA), this letter amount was introduced to be the highest applicable ceiling price administered by the Federal Energy Regulatory Commission under the NGPA. Beginning in approximately 1982, the gas market changed significantly, and in many instances, market prices fell below the NGPA ceiling prices. Thus, by the terms of NTL–5, gas producers would often be required to pay royalties based on a value amount exceeding the market price.

However, during this period, officials of the Minerals Management Service (MMS) notified some producers by letter that MMS would accept gross proceeds under an arm's-length contract, rather than the NGPA ceiling price, as the basis for calculating royalties. Thus, in reliance on this information, and because of the inequitable results a literal application of NTL–5 would have, many gas producers did not, and have not to date, paid royalties based on the NGPA ceiling prices.

On July 25, 1986, MMS published a final notice prospectively modifying NTL–5 effective August 1, 1986. Under that final notice, NTL–5 was modified so that valuation of most gas production from onshore Federal and Indian lands will be determined in accordance with regulations at 30 C.F.R. section 206.103, which require, inter alia, the value of production for royalty purposes to be "the estimated reasonable value of the product" but under no circumstances "less than the gross proceeds accruing to the lessee".

Prior to issuing the July 25, 1986 notice, MMS had sought comments on whether the modification of NTL–5 should be made retroactive. After obtaining public comment, MMS declined at that time to modify NTL–5 retroactively.

However, on January 15, 1987, MMS published a proposed modification to NTL–5 that would change the effective date of the July 25, 1986, modifications to NTL–5. Under the proposed notice, the effective date of the NTL–5 modifications would range from May 1, 1982, to March 1, 1985, depending on the particular NGPA category of gas involved. These dates represent the time when, according to the MMS, specific categories of gas began to be subject to "market-out" clauses, whereby the purchaser of gas was able, because of market conditions, to exercise an option under the contract not to take the gas at the NGPA ceiling price, but could purchase gas for a lesser price.

MMS's proposed notice of January 15, 1987, met with controversy. Objections were voiced by representatives of some affected Western States, as well as by representatives of some affected Indian tribes. These objections stemmed from concern on the part of the States and Indians as to the revenue implications of the proposed modifications of NTL–5, given the fact that the States receive a 50-percent share and the Indians receive all of the royalty receipts.

The Supplemental Appropriations Act for Fiscal Year 1987 contained a provision which prohibited implementation of any rule modifying NTL–5 until November 1, 1987. The House Appropriations bill for fiscal year 1988 (H.R. 2712) contains a provision pro-

hibiting implementation of any such rule through the end of fiscal year 1988.

However, the Governors of six affected Western States (Colorado, Montana, New Mexico, North Dakota, Utah, and Wyoming) met, and on July 5, 1987, agreed to support a valuation approach, which, generally stated, would provide for a case-by-case review and allow royalties to be calculated on a reasonable value based on an arm's-length contract in situations where a legitimate market-out clause or other events forced the lessee to take less than the NGPA ceiling price.

Subsequently, certain Indian representatives met with representatives of the Governors and MMS officials. The meetings with Indian lessors resulted in an agreement on a valuation approach for the gas involved. Modification of this agreement was subsequently discussed in a meeting attended by Indian lessors and industry representatives.

As a result of the controversy associated with the MMS proposed retroactive modification of NTL-5, S. 1814 was introduced. The text and title of that bill have been substituted for the language of H.R. 3479, as passed by the House of Representatives and referred to the Committee. The full terms of the agreements reached by MMS, the States, and the Indian lessors are not embraced by the bill. However, the bill is intended to clarify legislatively the royalties due on the natural gas production covered by the bill so as to avoid the inequities resulting from the required application of the NGPA ceiling prices. Required application of NGPA ceiling prices would not have been reasonable given market conditions during this period.

According to MMS estimates, there are approximately $500,000 in royalties that have been paid based on NGPA ceiling prices as a result of audits and that are currently on administrative appeal. MMS estimates that $2 million should cover all potential refunds of royalties that have been paid based on the NGPA ceiling price.

During consideration of this bill, the Committee directed that certain questions posed by Senator Evans and answers to the questions be printed in the report accompanying the bill. Those questions and answers follow:

1. Is it correct that sections 2(a)(4) and (b)(4) of the Federal and Gas Royalty Management Act of 1982 (30 U.S.C. 1701(a)(4) and (b)(4)) reaffirm the federal trust responsibility for the administration of Indian oil and gas resources?

Answer: Yes.

2. Is it also correct that no provision of S. 1814 is intended to amend or otherwise change sections 2(a)(4) and (b)(4) of the Federal Oil and Gas Royalty Management Act of 1982?

Answer: Yes.

3. Is it correct that NTL-5 has been determined by the Solicitor of the Department of the Interior to be a formal regulation of the Department for the period from June 1, 1977 through August 1, 1986?

Answer: The Solicitor of the Department of the Interior has determined that NTL-5 was a rule within the meaning of the Administrative Procedure Act.

4. Is it correct that the decision of the Tenth Circuit Court of Appeals in the case of *Jicarilla Apache Tribe* v. *Supron Energy Corporation*, 728 F.2d 155, 1570 (Seymour J. dissenting), rev'd on rehearing, 782 F.2d 855 (10th Cir. 1986) (en banc, adopting dissenting opinion), modified, 793 F.2d 1171, cert. denied, 107 S.Ct. 471 (1987), is unaffected by any provision of S. 1814?

Answer: Yes.

5. Is it also correct that the *Jicarilla* decision requires MMS to determine the royalty value on Indian leases by application of all of the reasonable valuation methods contained in the lease terms and regulations and then selecting that method which maximizes the return to the Indian lessor?

Answer: The Court in *Jicarilla* ruled that:

Given two reasonable interpretations, Interior's trust responsibilities require it to apply whichever accounting method (BTU or net realization) yields the Tribe the greatest royalties. 728 F.2d 1555, 1569 (10th Cir. 1984). We understand that the Department of the Interior does not agree with the characterization of the *Jicarilla* decision set forth in the question, but that certain Indian groups do. We also understand that this issue is currently being litigated in the District Court in Wyoming.

6. Is it correct that nothing contained in S. 1814 is intended to restrict or prohibit any right or claim of any Indian lessor arising under NTL-5 from being adjudicated in a court of competent jurisdiction?

Answer: S. 1814 does not restrict or prohibit any right or claim of an Indian lessor from being adjudicated in that it does not bar the filing of claims in any court. However, S. 1814, to the extent that it "forgives" lessees from paying royalties based on the NGPA ceiling price would, in all likelihood, make it difficult for an Indian lessor to prevail in a case brought to recover royalties based on the NGPA ceiling price from these lessees.

Under S. 1814, the Indian lessor would be free to file a claim against the United States for the royalty amounts based on the NGPA ceiling price. To the extent that S. 1814 indicates a Congressional determination that royalties based on the NGPA ceiling price were not reasonable for the gas production involved, it probably would make recovery by the Indian lessor of the royalties based on NGPA ceiling prices more difficult. S. 1814 would not prevent the lessor from asserting a claim for breach of fidiciary duty against the United States.

The Committee expressed no opinion as to whether any action by the Department of the Interior, including actions relating to the collection of royalties under NTL-5, constituted a breach of fiduciary duty.

LEGISLATIVE HISTORY

On July 10, 1987, the Subcommittee on Mineral Resources Development and Production conducted an oversight hearing on the proposal by the Department of the Interior to retroactively modify Notice to Lessees-5 (NTL-5) relating to the value of natural gas

production from Federal and Indian onshore leases for royalty purposes. S. 1814 was introduced on October 23, 1987, by Senator Melcher, on behalf of himself and Senator Nickles. S. 1814 was also cosponsored by Senators Wirth, Johnston, Hecht, and Simpson.

H.R. 3479 was introduced by Congressman Udall on October 13, 1987, and was cosponsored by Congressman Rahall. The measure was ordered reported, as amended, by the Committee on Interior and Insular Affairs on October 14, 1987 (Report No. 100-377). On November 3, 1987, H.R. 3479 was amended and passed by the House of Representatives. On November 4, 1987, the measure was received in the Senate and referred to the Committee on Energy and Natural Resources, with subsequent referral to the Subcommittee on Mineral Resources Development and Production.

The Committee having considered S. 1814, ordered reported H.R. 3479 with an amendment in the nature of a substitute incorporating the text of S. 1814.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in an open business session on December 2, 1987, by unanimous vote of a quorum present, recommends that the Senate pass H.R. 3479, as amended.

The rollcall vote on reporting the matter to the Senate was 19 yeas and 0 nays as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford*	
Mr. Metzenbaum	
Mr. Melcher	
Mr. Bradley	
Mr. Bingaman	
Mr. Wirth	
Mr. Fowler	
Mr. Conrad	
Mr. McClure	
Mr. Hatfield	
Mr. Weicker	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	

*Indicates voted by proxy.

COMMITTEE AMENDMENTS

1. The amendment consists of the text of S. 1814, as introduced on October 23, 1987, as a substitute for the text of H.R. 3479.

2. The amendment changes the title of H.R. 3479.

SECTION-BY-SECTION ANALYSIS

Section 1 states the short title.

Section 2 sets forth definitions.

Subsection 3(a) provides that the provisions of section 3 are to be used in determining value for royalty purposes of gas production from Federal onshore or Indian oil and gas leases during the period from January 1, 1982, through July 31, 1986, which is within the coverage of specified sections of NTL–5 and for which the lessee or royalty payor provides certain written documentation of receipt of less than the highest applicable price under the Natural Gas Policy Act.

Subsection 3(b) provides that the value for gas covered by the Act produced from Federal onshore oil and gas leases is to be determined in accordance with the lease terms and regulations at 30 CFR Part 206.

Subsection 3(c) provides that the value for gas covered by the Act produced from Indian oil and gas leases is to be determined in accordance with the lease terms and regulations at 30 CFR Part 206 and 25 CFR sections 211.13 and 212.16, as applicable.

The House-passed bill includes the requirement that value for royalty purposes be the "highest reasonable value". The Committee rejects the use of this standard. The Committee believes that the "highest reasonable value" standard is not appropriate and will lead to prolonged litigation because it is a new standard. Instead, the Committee believes that value should be determined under the lease terms and the existing applicable regulations since they have been subject to previous administrative and judicial interpretation.

Subsection 3(d) describes the written documentation required by subsection 3(a).

Subsection 3(e) states that the section does not apply to gas for which the Secretary determines that the lessee or royalty payor received less than the highest applicable price under the Natural Gas Policy Act due to a failure to collect amounts under a contract and not as a result of market conditions or considerations.

Subsection 4(a) provides that if the Secretary or a court determines that a lessee or royalty payor on a Federal onshore oil and gas lease has paid more than the value determined under subsection 3(b) the Secretary shall refund the excess amount from Federal mineral receipts. The Secretary may not recoup any portion of the refund from the States.

Subsection 4(b) provides that if the Secretary or a court determines that a lessee or royalty payor on an Indian oil and gas lease has paid more than the value determined under subsection 3(c) the Secretary shall refund the excess amount from Federal mineral receipts. The Secretary may not recoup any portion of the refund from the Indian lessor

Subsection 4(c) provides that the total amount of refunds made under this section may not exceed two million dollars ($2,000,000).

Section 5 sets forth the procedures for providing certain notices and conducting audits required by the Act. Subsection 5(c) provides for a report to each Indian tribe holding an Indian oil and gas lease from which gas within the coverage of the Act was produced. Such report is to contain information on the difference between royalties

computed in accordance with NTL–5 and royalties computed in accordance with subsection 3(c) of the Act.

Section 6 sets forth record keeping requirements.

COST AND REGULATORY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 3, 1987.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared a revised cost estimate for H.R. 3479, NTL–5 Gas Royalty Act of 1987, as ordered reported by the Senate Committee on Energy and Natural Resources, December 2, 1987.

H.R. 3479 would allow the Secretary of the Interior to clarify the amount of royalty payments due for gas produced from certain onshore federal and Indian leases between January 1, 1982 and July 31, 1986. In the event that case-by-case reviews of claims reveal instances of royalty underpayment, the Secretary would be authorized to collect the amount of the underpayment. If these reviews reveal that royalties calculated in accordance with a specific Mineral and Management Service (MMS) rule resulted in overpayments, lessees would receive a refund. Total refunds would be limited to $2 million.

The Secretary would be required to provide notification of the enactment of H.R. 3479. Claimants would have to produce written documentation of instances of royalty overpayments as part of the review process. Refunds would be made entirely from the federal government's share of mineral receipts and therefore would not affect payments to states or Indian tribes.

Information from MMS indicates that royalty refunds resulting from reviews are likely to total approximately $500,000. It is possible that these refunds would be offset by the collection of royalty underpayments also discovered in these reviews, though such collections would be shared with the states. Until the case-by-case reviews are completed, however, it is not possible to estimate the net impact of this bill on the federal budget.

States would receive 50 percent and Indian tribes 100 percent of any royalty underpayments collected as a result of this legislation. CBO expects H.R. 3479 to have no other impact on the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in implementing H.R. 3479, as amended. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 3479, as amended.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports and communications received by the Committee from the Office of Management and Budget and from the Department of the Interior are set forth below.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, November 13, 1987.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for the views of the Department of the Interior (DOI) on S. 1814, a bill to provide clarification regarding the royalty payments owed under certain Federal onshore and Indian oil and gas leases.

The Department strongly supports S. 1814. We believe that this bill would provide an equitable resolution of the complex and contentious issues related to the application of Notice to Lessees No. 5 (NTL-5) during the 1982-1986 period.

In an effort to address the issues related to NTL-5, DOI engaged in a series of consultations between representatives of the Department of the Interior, representatives of the Governors of six western States impacted by NTL-5 and subsequently with a number of Indian representatives. After extensive discussions, the parties reached an agreement in principle. S. 1814 is generally in accord with that agreement. It provides that royalties owed by lessees will be based on the reasonable value of production under the lease terms and regulations published in the Code of Federal Regulations, rather than basing royalty valuation on the artificially high Federal Energy Regulatory Commission (FERC) ceiling prices. Lessees who have already paid based on the FERC prices will receive refunds.

While we are generally supportive of S. 1814, we have comments on one of the provisions. Section 5(b) provides for a case-by-case audit of royalties for Indian oil and gas leases on which gas was produced from January 1, 1982, to July 31, 1986. We plan to comply with section 5(b) in a manner consistent with our current auditing strategy.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. STEPHEN GRILES,
Assistant Secretary,
Land and Minerals Management.

U.S. DEPARTMENT OF THE INTERIOR,
MINERALS MANAGEMENT SERVICE,
Washington, DC, July 31, 1987.

MEMBER OF CONGRESS,
U.S. Senate,
Washington, DC.

DEAR SENATOR: As you may know, when NTL–5 was originally issued in 1977, the price of gas was regulated by the Federal Government. For most interstate gas sales, NTL–5 directed royalty payors to use first Federal Power Commission (FPC) and later Natural Gas Policy Act (NGPA) ceiling prices administered by the Federal Energy Regulatory Commission as the basis for computing royalty due. Beginning in approximately 1982, the gas market changed significantly and producers typically could no longer obtain NGPA ceiling prices for their gas. You will recall that Interior issued a proposed change to NTL–5 last January to recognize that market change in the royalty valuation process.

In an effort to recognize these changed conditions, the Governors of six western States recently met to discuss how the Federal Government should administer NTL–5. Principally, they agreed that a case-by-case review should be done to determine if royalty valuation determinations under NTL–5 were reasonable, and if not, to utilize the Minerals Management Service's underlying regulations in Title 30 of the Code of Federal Regulations and guidelines for this purpose. Their approach is consistent with one advocated by several Congressional staff members at a meeting held at the Interior building on July 2, 1987. Enclosed for your review is the agreement the Governors reached regarding this issue.

Subsequent to that meeting, the Department of the Interior met with representatives of the Governors and affected Indian Tribes and allottees in an effort to articulate the procedures which would need to be followed to implement the Governor's policy on NTL–5 and to respond to the concerns of Indian lessors. Several Congressional staff members and General Accounting Office (GAO) representatives joined those meetings.

We are pleased to report that agreements were reached which we find to be an acceptable alternative to our proposed rulemaking, but they would require some implementing action by Congress in lieu of a modification to Federal regulations. As you will note from the enclosed materials, both the State and Indian representatives recognized that the changed market conditions created an inequitable situation for industry if they were expected to pay royalties on the basis of unattainable NGPA ceiling prices.

The materials enclosed outline the agreement between the parties regarding when and in what manner it is appropriate to utilize

the existing regulations (30 CFR 206.103; and in the case of Indian leases, 25 CFR 211.13 or 25 CFR 212.16) to determine value for purposes of royalty determinations. Also included in the materials is draft legislative language which would be necessary to implement the approach we have described.

We have reached a consensus approach to resolving the NTL-5 issue which is in the best interest of all parties. We believe the materials are largely self-explanatory; however, we are scheduling several Hill briefings and are otherwise available to discuss these matters and to answer any questions you might have on this issue.

Sincerely,

WM. D. BETTENBERG,
Director.

Enclosures.

GOVERNOR'S POLICY STATEMENT ON NTL-5

STATE OF WYOMING,
OFFICE OF THE GOVERNOR,
Cheyenne, July 6, 1987.

NTL-5 POSITION

Background

1. Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases No. 5 (NTL-5) was issued on June 1, 1977, and generally required that gas be valued at the regulated price approved by the Federal Power Commission. This was subsequently interpreted to mean the Natural Gas Policy Act (NGPA) ceiling price. These ceiling prices were generally compared to contract prices at that time.

2. Beginning in 1982, gas prices started to decline and continued on their downward slide through 1986 (while NGPA ceiling prices which are inflation adjusted, continued to increase). Through market out clauses or contract renegotiations with pipeline companies, most Federal and Indian lessees received less than NGPA ceiling prices.

3. In 1984 or earlier, the Department of Interior communicated with many lessees indicating their intent to not enforce NTL-5, and to enforce 30 CFR 206.103 for valuation purposes. In general, standard industry practices resulted in royalty payments being made on the basis of gross proceeds received by lessees rather than ceiling prices under NTL-5.

4. Significant questions have surfaced regarding the legality and equity of applying NTL-5 across-the-board to all lessees during the period from May, 1982, when the first market-outs occurred, through August, 1, 1986, when the Department modified NTL-5 prospectively to allow valuation based upon 30 CFR 206.

Position

1. From May, 1982 through August 1, 1986, NTL-5 may not reflect "reasonable value for the product" for royalty purposes as required by law. Relief from the restrictive provisions of NTL-5 should be granted by the Department only on a case-by-case basis

through determining reasonable value based upon arms-length contracts, and, at the events which forced a lessee to take a price less than the ceiling price. This appears to require a modification to NTL-5, made applicable retroactively.

2. In determining a reasonable value on a case-by-case basis, protections should be in place to avoid determining value based on verbal agreements, retroactive contracts, non-arms-length contracts, or other considerations apart from legitimate market conditions which may have influenced the lessee's decision to accept less than fair value for the gas. The lessee should have the burden of documenting events or conditions which warrant a departure from NTL-5 in determining value. Gross proceeds should remain the minimum value for royalty purposes. Representatives of the Department of Interior, States and Congress should work together cooperatively to arrive at language which addresses the inequities underlying the NTL-5 issue.

3. States should not bear the financial burden for misguidance or untimely decisions by the Department. Any refunds due companies should be credited against the Federal share of future royalties.

4. The Department should immediately notify lessees to retain all records during this period for audit purposes.

5. The Department and State Auditors should aggressively pursue audits of companies to assure that all royalties due State and Federal governments have been paid.

ROY ROMER,
Colorado.
TED SCHWINDEN,
Montana.
GARREY CARRUTHERS,
New Mexico.
GEORGE A. SINNER,
North Dakota.
NORMAN H. BANGERTER,
Utah.
MIKE SULLIVAN,
Wyoming.

MATERIALS GENERATED IN MEETING WITH STATE REPRESENTATIVES

RESOLUTION OF NTL-5 ISSUE

Background

Notice to Lessees No. 5 (NTL-5) is the regulation which prescribes the procedures to be used to determine the value, for royalty purposes, of natural gas production from onshore Federal and Indian oil and gas leases. NTL-5 was promulgated in 1977 and provided that the value of production for the purpose of computing royalty for natural gas sold into interstate commerce shall be the higher of (a) the price received by the lessee of (b) the highest applicable ceiling rate then established by the Federal Power Commission (FPC) for the same vintage gas. When NTL-5 was adopted in 1977, an energy crisis existed and expectations were that gas prices would continue to rise, limited only by the FPC.

In 1978, the Natural Gas Policy Act (NGPA) was enacted which established an incentive pricing mechanism which was dramatically different from the traditional cost-based methodology used by the FPC to establish just and reasonable ceiling rates under the Natural Gas Act of 1938. The NGPA substituted an incentive pricing scheme that established, for eight basic categories of gas, a base price plus a monthly escalator according to a statutory formula. The NGPA established a maximum lawful ceiling price, but did not require purchasers to pay this maximum lawful ceiling price. In terms of royalty valuation under NTL-5, the ceiling rate established by the FPC has been interpreted to mean the maximum lawful ceiling price established by the NGPA. This was an appropriate interpretation for some time after passage of the NGPA since a strong energy market existed and natural gas, for the most part, was selling at maximum lawful ceiling prices.

However, beginning in 1982, oil prices began to erode. As the price of oil declined, so did the price of the fuels that were alternatives to oil. End users began to switch to the cheaper alternative fuels. To retain the end markets, resale prices for gas were reduced by interstate pipelines. Competition for end users necessitated reduction of wellhead purchase prices by purchasers, generally through the exercise of market out contract provisions to levels below NGPA maximum lawful ceiling levels. Also, increasing volumes of production began to be sold by producers through special marketing programs and the spot market at prices substantially below the NGPA ceiling prices. In addition, the FERC opened interstate pipelines for contract carriage of natural gas to end users. Not only did the economics in the gas industry change dramatically, but also the traditional approaches to sale and delivery of production.

The effect of this precipitous fall in natural gas market prices from NGPA maximum lawful levels can not be accommodated within the requirements of the ceiling prices of NTL-5 and still be consistent with the requirement of 30 CFR part 206 and most court interpretations of value under the Mineral Lands Leasing Act that the value of production shall be a reasonable value. Because of this inflexibility in the valuation provisions of NTL-5, we believe a procedure should be permitted whereby the Minerals Management Service determines that, if the value of production prescribed by NTL-5 is unreasonable, the MMS shall determine a value by applying the criteria laid out in 30 CFR part 206.

30 CFR 206.103—Value basis for computing royalties

The value of production, for the purpose of computing royalty, shall be the estimated reasonable value of the product as determined by the Associate Director due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices, and to other relevant matters. Under no circumstances shall the value of production of any of said substances for the purposes of computing royalty be deemed to be less than the gross proceeds accruing to the lessee from the sale thereof or less than the value computed on such reasonable unit value as shall

have been determined by the Secretary. In the absence of good reason to the contrary, value computed on the basis of the highest price per barrel, thousand cubic feet, or gallon paid or offered at the time of production in a fair and open market for the major portion of like-quality oil, gas, or other products produced and sold from the field or area where the leased lands are situated will be considered to be a reasonable value.

Agreement With States for Federal Onshore Leases

GENERAL POLICY PARAMETERS

1. MMS will not issue a regulation which would cancel NTL-5 retroactively.

2. MMS in consultation with the appropriate State, will determine on a case-by-case basis if the royalty value prescribed by NTL-5 is unreasonable. This will be done by looking at the prices generally received in the field or area by producers with arm's-length contracts.

3. Prices received under arm's-length contracts which are less than maximum lawful ceiling prices will generally lead to the conclusion that NTL-5 is unreasonable. Prices received under the arm's-length contract will be accepted as value, except where factors other than legitimate market conditions have influenced price.

4. In determining prices under arm's-length contracts, no verbal agreements will be accepted. If the contract has a market out clause, the new price will be effective from the date the market out clause was exercised in writing consistent with the terms of the contract. Exercise of a market out clause will not be accepted retroactively. Where the amended price is not the result of a market out clause, MMS will recognize the effective date mutually accepted in a written contract amendment. Such date will not be earlier than the date of the first written notice of intent to change price.

5. The value prescribed by NTL-5 for sales of natural gas under non-arm's-length contracts will be determined to be unreasonable if the value determined by a major portion analysis or the value determined by looking at prices received by other producers under arm's-length contracts in the same field or area is less than the maximum lawful ceiling price. If the maximum lawful ceiling price is unreasonable, value will be determined by a major portion analysis. If this is not feasible, value will be determined by looking at prices received by other producers under arm's-length contracts in the same field or area.

6. The value of production for calculating royalty shall never be less than the gross proceeds accruing to the Lessee.

IMPLEMENTATION PROCEDURES

Any reference in these provisions to NTL-5 is a reference to the ceiling price requirement of section I.A.2.

The principal people who will conduct the case-by-case review are the State auditors under delegations of authority under Section 205 of the Federal Oil and Gas Royalty Management Act and the MMS auditors. The MMS, however, will send out a general letter to royalty payors telling them that if they have not paid royalties

pursuant to the requirements of NTL-5 that they will bear the responsibility of justifying the events or conditions which support payments on amounts less than the maximum lawful ceiling price. The general notice will state that the MMS will pursue NTL-5 valuation under audit unless the lessee can demonstrate that the value prescribed by the terms of NTL-5 is unreasonable. Unreasonable will be defined by the above general policy parameters. The MMS will also notify lessees that the audits will soon be initiated and that they shall retain all records until the audits are complete or they are further notified by MMS that record retention is no longer required.

The MMS, through the Royalty Compliance Division, will cooperatively work with State and Indian auditors to develop the requisite data and company records to perform the required case-by-case analysis.

Royalty demand letters which are based on NTL-5 and are currently under administrative appeal will be remanded to the Royalty Management Program to determine value by the above policy.

Any amount that has already been paid in accordance with NTL-5 and distributed but which is determined not to be owed will be proposed to the Congress to be refunded out of the Federal share of mineral receipts under the Mineral Lands Leasing Act.

Any amounts paid in accordance with NTL-5 but not appealed will be reviewed according to the above policy upon the request of the lessee and any amounts deemed not to be owed will be proposed to the Congress to be refunded out of the Federal share of mineral receipts under the Mineral Lands Leasing Act.

DRAFT LEGISLATIVE LANGUAGE

(for discussion purposes only)

The Minerals Management Service (MMS) shall not expend any funds appropriated under this Act for the purpose of retroactively modifying Notice of Lessees and Operators No. 5 (NTL-5), 42 Fed. Reg. 22,610 (May 4, 1977), for any period prior to August 1, 1986. If during Fiscal Year 1987 or any subsequent fiscal year the Director of MMS or his designee examines royalty valuation for any onshore natural gas production prior to August 1, 1986, the Director or his designee shall review the value required under NTL-5 to determine if such value is reasonable. If the Director or his designee determines that the royalty valuation required under NTL-5 in any particular case or category of cases is unreasonable, then such production shall be valued according to existing regulations at 30 C.F.R. Part 206, and in the case of Indian leases 25 C.F.R. 211.13 or 25 C.F.R. 212.16, as applicable, and not under NTL-5. If MMS refunds any royalties previously paid pursuant to NTL-5 as a result of a determination that the value required under NTL-5 was unreasonable, such refunds shall be paid from monies received under section 35 of the Mineral Lands Leasing Act of 1920, as amended, 30 U.S.C. 191, which would otherwise be deposited to miscellaneous receipts at the Treasury. The MMS shall not recoup any portion of any such refund from any future disbursements of royalties to a State, Indian tribe, or Indian allottee.

AGREEMENTS WITH INDIANS FOR INDIAN LEASES

PROCEDURES FOR VALUING INDIAN LEASES

General Policy Parameters

1. MMS will not issue a regulation which would cancel NTL–5 retroactively.

2. These procedures apply only to gas production subject to valuation under NTL–5 section I.A.2 where the price received for natural gas is below NGPA ceilings due to market conditions. Any reference herein to NTL–5 is a reference only to this situation.

3. MMS will determine on a case-by-case basis if the royalty value prescribed by NTL–5 is unreasonable.

For arm's-length [1] contract situations this will be done by ascertaining the applicable NTL–5 price, the median value [2] and gross proceeds. Where the NTL–5 value exceeds the highest reasonable royalty value, it will be deemed to be unreasonable. Generally, MMS will conclude that NTL–5 is unreasonable where the maximum lawful ceiling price exceeds both gross proceeds and values determined by median value analysis. The MMS will be expected to pursue payment of only the highest reasonable royalty value from lessees.

If it is determined that the NTL–5 value is unreasonable, then the following procedure consistent with the requirements of the various Indian mineral leasing statutes, lease terms, and regulations in Titles 25 and 30 of the Code of Federal Regulations will be used to determine a reasonable value for gas sold pursuant to an arm's-length contract:

a. MMS will compare the gross proceeds accruing to the lessee with the median value. Median value on production will be calculated by using the like NGPA category gas of similar quality sold from the same field or area for each month. All known gas in the appropriate NGPA category will be arrayed from most expensive to least expensive. Median value is that price at which 50 percent (by volume) plus 1 mcf of the gas is sold.

b. If the median value exceeds the gross proceeds, MMS will send to the lessee an issue letter proposing to use the median value. The lessee then will be given the opportunity to rebut the proposed

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[1] Arm's-length contract means a contract or agreement between independent, nonaffiliated parties which reflected the total consideration actually transferred directly or indirectly from the buyer to the seller for the gas, residue gas or gas plant products. For purposes of this Subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this section, based on the instruments of ownership of the voting securities of an entity, or based on any other forms of ownership: (1) Ownership in excess of 50 percent constitutes control; (2) Ownership of 20 through 50 percent creates a presumption of control; and (3) Ownership of less than 20 percent creates a presumption of noncontrol.

[2] Where median value is used herein, it is intended to mean median value as typically conducted by MMS, or where such value cannot be determined, a value based on a comparable value analysis or a value determined by any other appropriate method. MMS recognizes that litigation is pending regarding a weighted average approach. Nothing in this agreement prejudices the litigation position of the various parties to that suit, and MMS recognizes that for the periods at issue, the result of that litigation may require MMS to revisit the audits based on the weighted average approach.

Notwithstanding any provisions of this section, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for a specific month the requirements of this section must be met for that production month as well as when the contract was executed.

values, if gross proceeds is not used, by demonstrating that its arm's-length contract price was reasonably and prudently negotiated under the market circumstances existing at the time.

c. Based upon the lessee's response, MMS will make a tentative value determination. MMS will consult, if possible, with the affected Indian lessor who will have an opportunity to comment on the valuation determination.

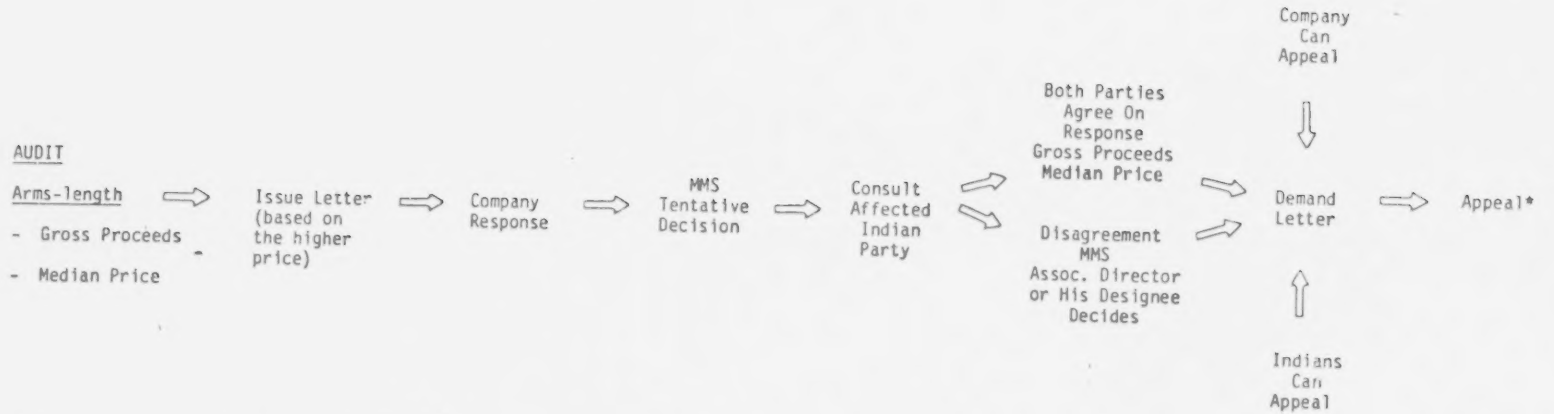
d. If the Indian lessor and MMS agree upon the value, MMS will issue a demand letter to the lessee in accordance with the agreement. If there is no agreement, MMS will consider all relevant matters and issue a demand letter. If that decision is adverse to the Indian lessor's position, the Indian lessor may appeal that determination.

4. In determining prices under arm's-length contracts, no verbal agreements will be accepted. If the contract has a market out clause, the new price will be effective from the date the market out clause was exercised in writing consistent with the terms of the contract. Exercise of a market out clause will not be accepted retroactively. Where the amended price is not the result of a market out clause, MMS will recognize the effective date mutually accepted in a written contract amendment. Such date will not be earlier than the date of the first written notice of intent to change price.

5. The value prescribed by NTL–5 for sales of natural gas under non-arm's-length contracts will be determined to be unreasonable if the value determined by a median value analysis or the value determined by looking at prices received by other producers under arm's-length contracts in the same field or area is less than the maximum lawful ceiling price. If the maximum lawful ceiling price is unreasonable, value will be determined by a median value analysis. If this is not feasible, value will be determined by looking at prices received by other producers under arm's-length contracts in the same field or area.

6. The value of production for calculating royalty shall never be less than the gross proceeds accruing to the lessee.

7. Upon request, MMS will be prepared to report the difference between an NTL–5 value determination and highest reasonable royalty value to the Indian tribe for their information.



*Company and Indian appeals will be handled as required by 30 CFR 290.

DRAFT LEGISLATIVE LANGUAGE

(for discussion purposes only)

The Minerals Management Service (MMS) shall not expend any funds appropriated under this Act for the purpose of retroactively modifying Notice to Lessees and Operators No. 5 (NTL-5), 42 Fed. Reg. 22,610 (May 4, 1977), for any period prior to August 1, 1986. If during Fiscal Year 1987 or any subsequent fiscal year the Director of MMS or his designee examines royalty valuation for any onshore natural gas production prior to August 1, 1986, the Director or his designee shall review the value required under NTL-5 to determine if such value is reasonable. If the Director or his designee determines that the royalty valuation required under NTL-5 in any particular case or category of cases is unreasonable, then such production shall be valued according to existing regulations at 30 C.F.R. Part 206, and in the case of Indian leases 25 C.F.R. 211.13 or 25 C.F.R. 212.16, as applicable, and not under NTL-5. If MMS refunds any royalties previously paid pursuant to NTL-5 as a result of a determination that the value required under NTL-5 was unreasonable, such refunds shall be paid from monies received under section 35 of the Mineral Lands Leasing Act of 1920, as amended, 30 U.S.C. 191, which would otherwise be deposited to miscellaneous receipts at the Treasury. The MMS shall not recoup any portion of any such refund from any future disbursements of royalties to a State, Indian tribe, or Indian allottee.

MEMORANDUM TO DEPUTY ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, SIGNED BY TWO INDIAN REPRESENTATIVES

MEMORANDUM

JULY 24, 1987.

To: Jim Cason, Deputy Assistant Secretary, Land and Minerals Management.

From: Indian Representatives.

Subject: Proposed Retroactive Application of the Modified NTL-5.

We, the undersigned tribal representatives, desire that our views on the above-titled issue (and, we believe, also the views of the tribal representatives not signatories to this memorandum, but who participated in the July 23rd meetings with you in Denver and who are listed below on the signature page), be communicated to all concerned. Your cooperation is requested in ensuring this memorandum describing these views is included in the materials you transmit to Congress regarding your anticipated treatment of the above-entitled issued.

In 1977, during a period of steadily rising prices of natural gas, the MMS adopted a rule known as NTL-5 to secure for Federal, state, and Indian royalty recipients royalty payments based on the highest value permitted by the laws and regulations governing the sales prices of natural gas. Essentially, NTL-5 required lessees to pay royalty on the greater of the applicable regulated prices or the gross proceeds of sale. Beginning in 1982, the natural gas market entered a period of steadily declining prices, a period which has

continued until recently. By 1986, it became apparent that NTL-5 might not be an appropriate method of valuing natural gas for royalty calculation purposes because some lessees were receiving gross proceeds far less than regulated prices. MMS, therefore modified the rule on August 1, 1986, by eliminating the strict adherence to regulated prices as a valuation benchmark.

Since 1986, MMS has received increasing evidence that, for the period of 1982-1986, to demand royalty payments based on the regulated prices stipulated by NTL-5 may result in considerable inequities in many cases for lessees who simply could not collect these prices for the gas they produced. Accordingly, in January, 1987, the MMS proposed to apply the modified NTL-5 retroactively in order to accord relief to these lessees. Vigorous opposition from states and Indian lessors has led the Congress to prohibit, temporarily at least, this attempt to modify the rule retroactively. Various members and committees of the Congress have urged the MMS, the states, and Indian lessors to attempt to reach an agreement on the manner in which this issue should be resolved. In response to these suggestions, you and the MMS have met with representatives of the affected states and Indian lessor, and have reached tentative agreements along the following lines.

With respect to the states, which receive one-half of the royalties collected from leases of Federal lands within their borders an agreement has been reached which requires a case by case review of whether the unmodified NTL-5 should be applied retroactively.

With respect to the Indian lessors, a tentative understanding has been reached which embodies the following principles:

The MMS acknowledges that the trust responsibility of the United States in the administration of Indian oil and gas properties imposes a unique and a high duty of care which requires that the royalties collected for production of gas from Indian lands be based on the highest reasonable value which can be ascribed to that production, consistent with the applicable terms of the leases and regulations. Although MMS believes that, in most instances involving arm's-length contracts, the gross proceeds received by the lessee do provide evidence of market value, the higher duty of care required in the discharge of the trust responsibility to Indian lessors requires that additional inquiry be made to ensure collection of the highest reasonable royalty value, and that inquiry does not permit an unexamined acceptance of gross proceeds even in cases involving arm's-length contracts.

In addition, to apply strictly the regulated price benchmark contained in NTL-5 to natural gas produced from Indian lands for the period 1982-1986 could result in considerable inequities for many lessees. On the other hand, to accord universal relief to all lessees by permitting them to remit royalties based on their sales proceeds very conceivably could result in similar inequities for the Indian lessors.

The MMS and representatives of the Indian lessors, therefore, have agreed that the MMS will continue the process of auditing all Indian leases from which natural gas has been produced during this period. In those instances in which royalty payments have been made on values which are significantly lower than those which would be required under a strict application of the unmodi-

fied NTL-5, the MMS will conduct a further analysis to determine the highest reasonable value upon which royalty payments would be required without reference to NTL-5. MMS then will initiate action to collect from the lessees or payors for any additional royalties revealed in this analysis.

Lessees who receive letters from MMS modifying them of additional royalty due would be given the opportunity to present to the MMS any reasons why they were unable to receive gross proceeds equal to the determined value. Acceptable reasons will be limited to purely objective market considerations. The MMS, thereafter, and following consultation with the Indian lessor, will make a decision whether or not to accept the lessee's explanations, and accordingly, to accept proceeds as value. If the MMS and the Indian lessor agree, either to accept or not to accept the lessee's gross proceeds as value, the MMS will issue a demand letter based on the agreed upon value. If the MMS and the Indian lessor cannot agree, then the MMS will make a decision in the matter, which decision both the Indian lessor and the lessee will have a right to appeal administratively.

In all instances, the differences between the determined values and the values which would have been due under a strict application of NTL-5 will be reported both to the Congress (upon request) and to the Indian lessors. The Indian lessors assert strongly that this difference should be paid to the Indian lessors by the United States. The Indian lessors advance a number of reasons for this position.

The Indian lessors maintain that, no less than the lessees who are regulated by the MMS regulations, the Indians have a right and a legitimate expectation to rely upon the diligent and uniform enforcement of regulations until such time as they are modified through appropriate administrative processes. Indeed, the Indians argue that the Federal trust duty in respect to management of Indian gas, accords them even greater rights than lessees to certainty in the application of the rules governing valuation of their gas. As a class of people for whose benefit these regulations were promulgated, the Indians maintain that payments or rights to payment accruing to them under these regulations rise to the level of vested property rights, and cannot be taken without just compensation. They further state that, under this theory, any attempt to modify the rule retroactively would subject all parties to lengthy and expensive litigation.

The Indians are willing, however, to acquiesce in the agency's efforts to provide equitable relief to lessees in appropriate cases, but the Indian lessors believe that the costs associated with providing this relief should rest with the United States where the responsibility for the inequity lies. More specifically, the Indians emphasize, and MMS concedes, that the rule at issue in this instance, in retrospect, should have been changed much earlier than it was changed. The party responsible for making this rule change, and thus responsible for any inequities now imposed upon lessors and lessees alike by failing to change the rule, clearly is the United States.

The Indian lessors further emphasize that they relied upon the government to enforce rules that were designed, at least in part, for their benefit and protection, and that financial and budgetary

decisions, and policies for the period in issue have been made in reliance upon enforcement of the rules (i.e., the unmodified NTL-5). The Indians charge that the MMS in large part is responsible for the failure of most lessees to comply with this rule during the period in issue because the agency effectively advised such lessees informally that compliance with the rule was not necessary. The Indian lessors were neither parties to, nor were aware of, these communications until several years had passed. In their view of the law, these lessees are not legally entitled to rely upon such informal advice, even from government officials, to ignore a rule which was in force and effect at the time. The fact that such advice was communicated to these lessees, without the lessors being made aware of such communications, did have the effect of precluding these lessors from receiving the opportunity to renegotiate their lease terms, reach negotiated settlements with the lessees, or otherwise to act to protect their own interests during this time.

For these reasons, the MMS and the Indian lessors have agreed to compute the differences in royalties due to the Indian lessors as a result of providing the above-described relief to the lessees; to advise the Indian lessors and, upon request—the Congress, of those differences; to set forth the facts and circumstances surrounding this issue; and to present to the Congress the Indian lessors' reasons for insisting that these differences in proceeds should be borne by the United States. The Indian lessors suggest that these differences should be met by means of an authorization for the expenditure of such sums as may be required to compensate the Indian lessors for the difference between the amounts they would receive under a strict application of NTL-5 and the amounts they actually receive under the terms of the agreed-upon approach as outlined above, such sums to be paid out of the Federal share of future oil and gas royalties collected for production of oil and gas from Federal lands.

Also attached hereto is proposed language for the FY 1988 appropriations bill for the Department of the Interior describing the above-described agreement.

We request that MMS ensure the attached agreement is incorporated in full in the Report for the FY 1988 bill.

———— ————

Council of Energy Resource Tribes.

———— ————

Shoshone Tribe.

Attendees at the July 23rd meeting:

Ute Mountain Ute Tribe.
Southern Ute Tribe.
Northern Arapahoe Tribe.
Oklahoma Indian Minerals Owner Association.
Indian Minerals Owner Association.
Cheyenne-Arapahoe Tribes.
Navajo Tribe.
Jicarilla Apache Tribe.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 3479, as reported.

○

19-006 O (24)

Calendar No. 470

100TH CONGRESS
1st Session

SENATE

REPORT
100-241

ABANDONED SHIPWRECK ACT OF 1987

DECEMBER 9 (legislative day, DECEMBER 8), 1987.—Ordered to be printed

Mr. JOHNSTON from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 858]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 858) to establish the title of States in certain abandoned shipwrecks, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Abandoned Shipwreck Act of 1987".

SEC. 2. FINDINGS.

The Congress finds that—

(a) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and

(b) included in the range of resources are certain abandoned shipwrecks, which have been deserted and to which the owner has relinquished ownership rights with no retention.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(a) the term "embedded" means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof;

(b) the term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a);

(c) the terms "public lands," "Indian lands" and "Indian tribe" have the same meaning given the terms in the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa-47011);

S313-42

(d) the term "shipwreck" means a vessel or wreck, its cargo, and other contents;

(e) the term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and

(f) the term "submerged lands" means the lands—

(1) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);

(2) of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);

(3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 (48 U.S.C. 1705); and

(4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (48 U.S.C. 1681).

SEC. 4. RIGHTS OF ACCESS.

(a) ACCESS RIGHTS.--In order to—

(1) clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irrreplaceable State resources for tourism, biological sanctuaries, and historical research; and

(2) provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 6 of this Act,

it is the declared policy of the Congress that States carry out their responsibilities under this Act to develop appropriate and consistent policies so as to—

(A) protect natural resources and habitat areas;

(B) guarantee recreational exploration of shipwreck sites; and

(C) allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

(b) PARKS AND PROTECTED AREAS.—In managing the resources subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provided additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title I of the National Historic Preservation Act, for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

SEC. 5. PREPARATION OF GUIDELINES.

(a) In order to encourage the development of underwater parks and the administrative cooperation necessary for the comprehensive management of underwater resources related to historic shipwrecks, the Secretary of the Interior, acting through the Director of the National Park Service, shall within nine months after the date of enactment of this Act prepare and publish guidelines in the Federal Register which shall seek to:

(1) maximize the enhancement of cultural resources;

(2) foster a partnership among sportdivers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;

(3) facilitate access and utilization by recreational interests;

(4) recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

(b) Such guidelines shall be developed after consultation with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen).

(c) Such guidelines shall be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under this Act.

SEC. 6. RIGHTS OF OWNERSHIP.

(a) UNITED STATES TITLE.—The United States asserts title to any abandoned shipwreck that is—

(1) embedded in submerged lands of a State;

(2) embedded in coralline formations protected by a State on submerged lands of a State; or

(3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

(b) The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The Secretary of the Interior, after consultation with the appropriate State Historic Preservation Officer, shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (a)(3).

(c) TRANSFER OF TITLE TO STATES.—The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

(d) EXCEPTION.—Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

(e) RESERVATION OF RIGHTS.—This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under—

(1) section 3, 5, or 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314); or

(2) section 19 or 20 of the Act of March 3, 1899 (33 U.S.C. 414 and 415).

SEC. 7. RELATIONSHIP TO OTHER LAWS.

(a) LAW OF SALVAGE AND THE LAW OF FINDS.—The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act applies.

(b) LAWS OF THE UNITED STATES.—This Act shall not change the laws of the United States relating to shipwrecks, other than those to which this Act applies.

(c) EFFECTIVE DATE.—This Act shall not affect any legal proceeding brought prior to the date of enactment of this Act.

PURPOSE OF THE MEASURE

The purpose of S. 858 is to vest title to certain abandoned shipwrecks that are buried in State lands to the respective States and clarify the management authority of the States for these abandoned shipwrecks.

BACKGROUND AND NEED

The central issue underlying this legislation is the ownership and the authority to manage abandoned shipwrecks on State lands. Currently, States claim title to and regulatory authority over abandoned historic shipwrecks. However, the Federal Admiralty Court has also claimed jurisdiction over these resources, creating confusion over ownership of the resource and in some cases resulting in inadequate protection of historical artifacts.

The Submerged Lands Act of 1953 gave the States title to the "land and natural resources" within 3 miles of their coasts. The States have contended that "lands and natural resources" include abandoned shipwrecks. Since the 1950's, the States have managed historic shipwreck archaeological sites as part of their historic preservation programs. In addition, 27 States have established specific laws regulating abandoned historic shipwrecks. The laws differ by State, but none prohibit sport diving on historic shipwrecks and about half of the laws provide for compensation for recovery activities undertaken by private parties.

Federal Admiralty Court and the admiralty system, which have their roots in English history and common law, were developed to deal with the recovery or salvage of goods lost at sea. The Admiralty Court makes a determination of a salvage award and ownership of a shipwreck depending on success in recovering the vessel or cargo, the danger present in the rescue, the value of the property recovered, and the time and labor expended by the salvor. Such a

determination for historic shipwrecks often times does not consider the archeological, historical, and other values associated with these wrecks which would preserve part of our nation's heritage.

This legislation would clarify that situation by asserting Federal ownership over these shipwrecks and then transferring title to the States for administration, management, and regulation.

LEGISLATIVE HISTORY

S. 858 was introduced by Senator Bradley on March 26, 1987. A hearing was held by the Subcommittee on Public Lands, National Parks and Forests on September 29, 1987.

At a business meeting on December 2, 1987, the Senate Committee on Energy and Natural Resources ordered S. 858, as amended, favorably reported.

COMMITTEE RECOMMENDATONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on December 2, 1987, by a unanimous vote of a quorum present, recommends that the Senate pass S. 858, if amended, as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford *	
Mr. Metzenbaum	
Mr. Melcher	
Mr. Bradley	
Mr. Bingaman	
Mr. Wirth	
Mr. Fowler	
Mr. Conrad	
Mr. McClure	
Mr. Hatfield	
Mr. Weicker	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	

*Indicates voted by proxy.

COMMITTEE AMENDMENTS

During the consideration of S. 858, the Committee adopted an amendment in the nature of a substitute. The substitute includes a number of technical and conforming amendments and some substantive changes. A discussion of those substantive differences follows. Additional information on the substitute is included in the "Section-by-Section Analysis" of tnis report.

1. Findings and definitions

The substitute clarifies that "abandoned shipwrecks", refers to those shipwrecks which have been deserted and to which all ownership rights have been relinquished. It also expands the definition of "embedded" to include the requirement that tools of excavation would have to be used to gain access to the shipwreck.

2. Guidelines

The substitute changes the authority for promulgation of the guidelines from the Advisory Council on Historic Preservation to the Secretary of the Interior, acting through the Director of the Park Service. In preparing the guidelines, the Secretary is required to consult with a variety of interests, including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archaeologists, historic preservationists, and fishermen. The guidelines were expanded to include the recognition of the interests of those engaged in shipwreck discovery and salvage. The purpose of these changes was to broaden the focus of the guidelines from primarily historic preservation to include the consideration of recreational and commercial interests as well.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title for S. 858, the "Abandoned Shipwreck Act of 1987".

Section 2 includes a set of Congressional findings.

Section 3 contains definitions of key terms in the Act.

Section 4 sets forth the general responsibilities of the States under this Act. The States are directed to develop policies to protect shipwrecks, guarantee recreational exploration of shipwreck sites, and allow for recovery of shipwrecks which are consistent with the protection of historical and environmental values. This section also encourages the States to create underwater parks to give further protection of these resources.

Section 5 provides for advisory guidelines to be developed by the Secretary of the Interior, acting through the Director of the National Park Service. The purpose of the guidelines is to assist the States and the appropriate Federal agencies in developing legislation and regulations to carry out the purposes of the Act. The guidelines are intended to enhance cultural resources; foster a partnership among a variety of parties including sportdivers, fishermen, archaeologists and salvors; facilitate access by recreational users; and recognize the interests of those engaged in shipwreck discovery or salvage.

Section 6 asserts that title to certain abandoned shipwrecks vests in the United States. These shipwrecks include those which are embedded in the submerged lands of a State, are located on coralline formations protected by a State or have been determined to be eligible for inclusion in the National Register. Notice of the location of these shipwrecks are to be provided to the public.

The purpose of providing notice to the public is to ensure that sport divers and others seeking to use abandoned shipwrecks know that wrecks have been found to be historically significant. The

need to give such advance notice must be balanced, however, against the danger that notice of location will lead to damage and pilferage.

Accordingly, it is expected that the degree of specificity with which such wrecks are located in public notices will vary from circumstance to circumstance. The Committee concurs that appropriate public notice of the site location may be accomplished in many different ways, including notice in the Federal Register, the marking of charts, a site marker, notice in local newspapers or diving information centers. The specificity of such notice may vary, and may be accomplished by other means, such as the 1-mile lease-tract method used by some States for off-shore oil and gas leases.

The title of those abandoned shipwrecks which meet the specified criteria outlined above are to be transferred to the appropriate State. The United States retains title only if the shipwreck is located on public lands, and any shipwrecks located on Indian lands is the property of Indian tribe owning the land.

There are some units of the National Park System where abandoned shipwrecks are found on lands which are owned by the United States, for example at Biscayne National Park in Florida. Section 6(d) would ensure that the United States retains title to these shipwrecks. In other park units, however, the submerged lands within the park boundaries are owned by the State. Section 6(c) would transfer title to these shipwrecks to the States.

The Committee is concerned that historic shipwrecks within national park boundaries be preserved, regardless of whether they lie in State or Federal waters. Accordingly, the Committee encourages the National Park Service and the States to enter into management agreements whereby any historic shipwrecks within national park boundaries will be protected by the National Park Service. The Committee expects the guidelines issued pursuant to section 5 to reflect this need to manage historic resources within park boundaries consistently.

Section 7 describes the relationship of the Abandoned Shipwrecks Act to other laws. In particular, the Law of Salvage and the Law of Finds do not apply to shipwrecks described in section 6.

The Committee recognizes that the management of long-submerged and abandoned shipwrecks now presents concerns far removed from the traditional admiralty interests in safety and in returning goods to the streams of commerce. As new technologies have allowed the recovery of wrecks that have been lost for long periods of time, a new concern has been developed for the historic and recreational interests in shipwrecks. Shipwrecks are no longer viewed as only lost commercial resources that should be salvaged so that the goods can be returned to commerce. Rather, many shipwrecks are now used as recreational resources for sport divers and fishermen and are viewed as invaluable and irreplaceable archeological resources.

The archeological and recreational interests require that certain shipwrecks be managed by entities with experience in these areas and a broad concern with historic and recreational resources as well as an awareness of the unique needs of their local resources. It is no longer appropriate for the admiralty courts to adjudicate these interests based on traditional admiralty concerns. Admiralty

courts remain best equipped to deal with issues essential to a national maritime jurisdiction, primarily the adjudication of commercial interests, as would be present in the wreck of ships that are currently engaged in commerce and their cargo.

The States and the Federal Government, both of which have extensive experience in recreational and historic site management as well as broad interests in a range of other historic and recreational resources, should manage the shipwrecks covered by this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 8, 1987.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 858, the Abandoned Shipwreck Act of 1987, as ordered reported by the Senate Committee on Energy and Natural Resources, December 2, 1987. We estimate that this bill would have no significant impact on the budget of the federal government, or of state or local governments.

S. 858 would assert federal title to certain abandoned shipwrecks and would transfer title to the state on whose submerged lands the shipwreck is located, unless the shipwreck lies within the boundaries of lands administered by the National Park Service (NPS). This bill would also direct the NPS to develop guidelines on managing shipwrecks and providing public access. Neither the NPS nor the affected states are expected to incur significant additional costs as a result of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 858. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 858, as reported.

EXECUTIVE COMMUNICATIONS

On September 22, 1987, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior, the National Oceanographic and Atmospheric Administration and the Office of Management and Budget setting forth executive views on S. 858. These reports had not been received at the time the report on S. 858 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 858, as reported.

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Calendar No. 471

100TH CONGRESS
1st Session

SENATE

REPORT
100-242

SHRINERS HOSPITALS FOR CRIPPLED CHILDREN

DECEMBER 9 (legislative day, DECEMBER 8), 1987.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 892]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 892) to remove the right of reversion to the United States in lands owned by the Shriners' Hospitals for Crippled Children on lands formerly owned by the United States in Salt Lake County, Utah, having considered the same, reports favorably thereon with an amendment to the text and recommends that the bill, as amended, to pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) notwithstanding any provision of the Act of March 14, 1946 (60 Stat. 55, Chapter 91), or any other provision of law, the Administrator of the General Services Administration, subject to receipt of the payment described in subsection (b), is authorized and directed to release by quitclaim deed to Shriners Hospitals for Crippled Children, a Colorado corporation, on behalf of the United States, any and all right of reversion held by the United States in and to the lands which were formerly owned by the United States in Salt Lake County, Utah, and which were transferred pursuant to said Act.

(b) In consideration for the quitclaim deed release described in subsection (a), Shriners Hospitals for Crippled Children shall pay to the United States the sum of $97,627.

(c) The Administrator shall fulfill the requirements of subsection (a) within sixty days of receipt of the payment provided for subsection (b).

PURPOSE OF THE MEASURE

The purpose of S. 892 is to provide for the quitclaim and release of any right of reversion held by the United States to a certain parcel of land comprising approximately 7.8 acres of land located in Salt Lake County, Utah.

S313-43

BACKGROUND AND NEED

Shriners Hospitals for Crippled Children is a public charity providing free hospital and medical care for children in 22 hospitals, with 20 located in the United States, and one in Mexico and one in Canada. There are a total of 1,200 beds available for inpatient care. The Intermountain Unit in Salt Lake City is a 45-bed facility.

The land subject to the reverter is about 7½ acres in Salt Lake County, Utah. The land was purchased in 1946 by the Shriners from the United States at fair market value. The hospital, which is in need of rehabilitation or replacement, was completed and the first patient admitted in 1951. Negotiations are in progress with the University of Utah Medical School which may lead to relocating the unit on the campus of the University. Without removing the remaining rights to reverts, negotiations between Shriners Hospitals and the University of Utah cannot go forward.

S. 892 would remove the remaining reverter and, as a consequence, empower Shriners Hospitals for Crippled Children to sell or dispose of the land and improvements after the new unit was built. The cost to build and furnish a new hospital could run in excess of $20 million if begun by 1990. The marketable value of the existing land and improvements—approximately $6 million—could significantly reduce the out of pocket cost of construction of the new unit.

LEGISLATIVE HISTORY

S. 892 was introduced by Senator Garn on March 31, 1987. A hearing was held by the Subcommittee on Public Lands, National Parks and Forests on July 30, 1987.

At a business meeting on December 2, 1987, the Senate Committee on Energy and Natural Resources ordered S. 892, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on December 2, 1987, by a unanimous vote of a quorum present, recommends that the Senate pass S. 892, if amended as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford*	
Mr. Metzenbaum	
Mr. Melcher	
Mr. Bradley	
Mr. Bingaman	
Mr. Wirth	
Mr. Fowler	
Mr. Conrad	
Mr. McClure	
Mr. Hatfield	

Mr. Weicker
Mr. Domenici
Mr. Wallop
Mr. Murkowski
Mr. Nickles
Mr. Hecht
Mr. Evans

*Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of S. 892, the Committee adopted an amendment in the nature of a substitute. The substitute makes a number of minor technical and clarifying changes in the bill as introduced. It also includes a provision, not found in the meausre as introduced, directing the Shriners Hospitals to pay for the reversionary interest. The amount to be paid is based on an appraisal prepared for the Shriners Hosptials for Crippled Children. This payment, approximately $100,000, is consistent with the corporate philosophy of the Shriners Hospitals to avoid taking any Federal subsidy or financial assistance with respect to the administration of its hospital system.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 892. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 892, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports received by the Committee from the General Services Administration and the Office of Management and Budget setting forth executive agency recommendations relating to S. 892 are set forth below:

ADMINISTRATOR,
GENERAL SERVICES ADMINISTRATION,
Washington, DC, July 16, 1987.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Your committee requested the views of the General Services Administration (GSA) on S. 892, a bill "To remove the right of reversion to the United States in lands owned by the Shriners' Hospitals for Crippled Children on lands formerly owned by the United States in Salt Lake County, Utah."

If enacted, S. 892 would provide for the quitclaim and release by the United States of any right of reversion held by the United States to the lands transferred pursuant to the Act of March 14, 1946 (60 Stat. 55, Chapter 91), notwithstanding any provision of such Act or any other provision of law.

The lands subject to the bill consist of 7.8374 acres, more or less, and are the principal part of 7.8854 acres conveyed by the United States by quitclaim deed to the Shriners' Hospitals for Crippled Children (Shriners) on July 12, 1946, for the sum of $8,500. The deed of conveyance provides that the lands be used exclusively as a location for a hospital for crippled children and that, upon cessation of such use, title shall revert to the United States. It is our understanding that the purpose of the bill is to enable relocation of the present hospital facility to a more desirable site while saving the property harmless from Federal retrieval and also perhaps introducing the possibility of its sale.

GSA objects to the proposed legislation in its present form because it neither provides for monetary consideration in return for the release of the use restrictions nor offers any assurance that the purpose of the original conveyance will continue to be served. Without such provisions, the bill can only result in windfalls to the Shriners without any reciprocal benefit to the Government.

GSA recognizes, however, that the purposes of S. 892 cannot be accomplished under the provisions of existing law, and we would therefore not object to the bill if it were amended to provide (1) that the existing hospital facility be sold at its fair market value; (2) that the United States receive the difference, if any, between the proceeds of such sale and the acquisition cost of the new hospital facility; and (3) that the purpose of the original conveyance be continued through the use of restrictions installed in the title to the new property.

The Office of Management and Budget has advised that, from the standpoint of the Administration's programs, there is no objection to the submission of this report to your committee.

Sincerely,

TERENCE C. GOLDEN.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, August 16, 1987.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Office of Management and Budget (OMB) on S. 892, a bill "To remove the right of reversion to the United States in lands owned by the Shriners' Hospitals for Crippled Children on lands formerly owned by the United States in Salt Lake County, Utah."

For the reasons stated by the General Services Administration in its July 16, 1987, report to you on this bill, OMB opposes enactment of S. 892 in its current form but would not object to it if amended as suggested by GSA.

Sincerely,

JAMES M. FREY,
Assistant Director for Legislative Reference.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 892, as reported.

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